

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 21, 2012

3:23 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Craig Johnson, Vice Chair
Representative Mike Chenault
Representative Dan Saddler
Representative Steve Thompson
Representative Lindsey Holmes
Representative Bob Miller

MEMBERS ABSENT

COMMITTEE CALENDAR

HOUSE BILL NO. 202

"An Act relating to the sale of food products by the producer to the consumer."

- HEARD & HELD

HOUSE BILL NO. 327

"An Act making privileged certain communications between employees and employee union representatives; and amending Rule 402 and Rule 501, Alaska Rules of Evidence."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 202

SHORT TITLE: SALES OF FOOD BY PRODUCERS TO CONSUMERS

SPONSOR(S): REPRESENTATIVE(S) T.WILSON

03/23/11	(H)	READ THE FIRST TIME - REFERRALS
03/23/11	(H)	L&C, RES
03/21/12	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 327

SHORT TITLE: EVIDENCE RULES: UNION/EMPLOYEE PRIVILEGE

SPONSOR(S): REPRESENTATIVE(S) LYNN

02/17/12	(H)	READ THE FIRST TIME - REFERRALS
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02/17/12 (H) L&C, JUD
03/21/12 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor and answered questions during the discussion of HB 202.

VIVIAN STIVER, Staff
Representative Tammie Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on behalf of the sponsor during the discussion of HB 202.

MICHAELLA RICE, Member
Tanana 4-H Teen Club
Fairbanks, Alaska

POSITION STATEMENT: Testified during the discussion of HB 202.

PAMELA LLOYD
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 202.

JILL LEWIS, Deputy Director - Juneau
Division of Public Health (DPH)
Central Office
Department of Health and Social Services (HSS)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion HB 202.

KRISTIN RYAN, Director
Division of Environmental Health
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 202.

MARIA RENSEL
Fairbanks, Alaska

POSITION STATEMENT: Testified during the discussion of HB 202.

RON KLEIN

Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion HB 202 and recommended the bill be tabled.

REPRESENTATIVE BOB LYNN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 327.

MIKE SICA, Staff
Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented a sectional analysis of HB 327 on behalf of the sponsor, Representative Bob Lynn.

DOUG MERTZ, Attorney
Mertz Law
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 327.

PETE FORD, Southeast Regional Manager
Alaska Public Employees Association (APEA);
President
Juneau Central Labor Council
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 327.

ACTION NARRATIVE

[3:23:44 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:23 p.m. Representatives Miller, Saddler, Thompson, Holmes and Olson were present at the call to order. Representatives Johnson and Chenault arrived as the meeting was in progress.

HB 202-SALES OF FOOD BY PRODUCERS TO CONSUMERS

[3:24:02 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 202, "An Act relating to the sale of food products by the producer to the consumer."

[3:24:15 PM](#)

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature referred to food samples on members' desks. She stated that she and her staff would conduct a skit to demonstrate the Department of Environmental Conservation's permitting regulations for farmers and farmer's markets.

VIVIAN STIVER, Staff, Representative Tammie Wilson, Alaska State Legislature, introduced herself.

REPRESENTATIVE T. WILSON stated the food products on members' desks are subject to state inspection. She explained the purpose of HB 202 is to allow farmers to sell products directly to consumers. She stated that she has heard from numerous people who sell products at farmers' markets and from farmers who would like less regulation. She related that these people seek to have people buy directly from them, and to decide for themselves whether their farms are clean and their food is packaged appropriately. She related that personal responsibility should be used rather than regulation. She offered to perform a skit, in which she and her staff attempt to implement the rules that the Department of Environmental Conservation (DEC) imposes on farmers' markets and food sales. She explained one rule is that food must be sold in the original form. She then cut a tomato, peeled an orange, and cut an apple to offer samples to people. Her staff, Ms. Stiver, played the role of the DEC's staff who interpreted the regulations governing food handling.

MS. STIVER identified the prior actions of cutting fruit as processing food, which is prohibited by the DEC. She also pointed out that if a daycare cares for five or more children the day care must be "permitted" to allow them to cut fruit.

[3:27:24 PM](#)

REPRESENTATIVE T. WILSON pointed out the fruit at the Representative Johnson's desk could be eaten at his own risk. She then offered to next cut a strawberry. She stemmed it and indicated her fingernail cut into the fruit.

MS. STIVER clarified that Representative T. Wilson could wash the fruit, but could not cut into it, which is the rule.

REPRESENTATIVE T. WILSON offered to cut the carrot, but was informed she could leave only minimal greens, but could not cut into the carrot.

MS. STIVER advised Representative T. Wilson that the annual license fee is \$200 per year and plan review fees, which is necessary to review the compliance to the license is also \$200, for a total of \$400.

REPRESENTATIVE T. WILSON offered to mix spices, which were previously purchased spices.

MS. STIVER informed Representative T. Wilson she would need to use stainless steel and referenced the specific DEC guidelines.

REPRESENTATIVE T. WILSON offered to serve custard-filled, jelly-filled, and cream cheese-filled donuts. She speculated that a wash station would probably be necessary to clean the utensils.

MS. STIVER indicated cream cheese and home-made custard would need refrigeration or the foods could be considered hazardous foods.

[3:31:25 PM](#)

REPRESENTATIVE T. WILSON agreed this skit may seem ridiculous. She agreed it is not a good idea to poison people. The farming industry can be quite profitable, but the DEC's regulations do not allow people an opportunity to serve simple food at a farmers' market such as the ones she just demonstrated. She offered her belief that people can assume personal responsibility and ask the seller the appropriate questions about processing. She said that currently food must be prepared in a commercial kitchen, which is very costly. She pointed out the food on members' desks. She said if she made any of the ingredients at home the food would need to be labeled with her name, home address, and phone number. She expressed concern that the person providing the contact information may be subject to some exposure. She referred to the food on members' desks and wondered how toxic the fruit and cookies could be. She advised members that HB 202 would limit the producer's gross sales to not exceed \$200,000. She did not object to stricter regulations for larger operators. She indicated that even the federal government has recognized the importance of growing food locally. She related that many lands in Alaska are currently underutilized, which she believes is due to the strict rules. She attended the DEC's meetings and they stressed the importance of keeping people safe. She asserted that government cannot protect people from absolutely everything. She acknowledged the bill is not perfect since it would open up sales of anything

grown on the farm. She did not have any issue with signage and supported the concept of providing a handout to advise people how to care for their food, including washing, refrigerating, and cooking it. She noted that the federal cooperative extension services provide people with a lot of information. Historically, home economics classes also taught people about food, but many of those courses have been cut, which means that regulation is used instead of education.

[3:35:03 PM](#)

REPRESENTATIVE T. WILSON explained it was difficult for her to interpret what was allowable. She asserted that people should be encouraged to grow food and sell it, but cannot due to overregulation. She said that the Department of Environmental Conservation (DEC) is opposed to the bill. She characterized HB 203 as a starting point. She said some people who wished to testify in support of HB 202 declined to testify since they are "permitted" by DEC and were concerned about repercussions.

[3:37:01 PM](#)

REPRESENTATIVE SADDLER inquired as to whether people are allowed to purchase apples or produce direct from farms or stands.

REPRESENTATIVE T. WILSON answered yes, noting she could sell apples. It may be difficult to determine whether food sold at roadsides was grown here. She predicted that people could tell if they could taste samples of them.

[3:37:25 PM](#)

REPRESENTATIVE SADDLER asked whether HB 202 is aimed to address the issue of unprocessed or unpasteurized milk products.

REPRESENTATIVE T. WILSON responded that from 2009-2012 the recalled foods did not come from farmer markets. She listed products recalled, including chocolate-covered raisins, Craisins, celery seed, raw turkey burgers, chicken products, and strawberry-banana smoothies. She stated that none of these contaminated products originated in Alaska, but were ones brought into Alaska and sold here. She speculated that oversight of milk and cheese products may need more regulation, but not selling tomatoes or apples. She thought selling direct farm produce should be an affordable process to allow Alaska's market to grow.

[3:39:04 PM](#)

REPRESENTATIVE THOMPSON recalled she mentioned day-care centers and asked for clarification on the rules for cutting up fruit for children in a day-care center.

MS. STIVER answered that it depends on the number of children in the facility. She recalled that if a day care has over five children they must adhere to DEC regulations.

[3:39:54 PM](#)

REPRESENTATIVE THOMPSON recalled his child attends a center that is licensed up to six children. He asked if his center would be under the regulations.

MS. STIVER offered to research this and provide the information to the committee.

[3:40:29 PM](#)

REPRESENTATIVE HOLMES recalled that parents bring snacks for the kids on teams. She asked how HB 202 would affect parents providing sports snacks such as oranges.

MS. STIVER responded that since the parents are not selling the snacks and plus the group served is a closed group - a team - so the activity is allowable and would not require a permit.

REPRESENTATIVE T. WILSON clarified that events are covered by the DEC even when the food products are not sold, such as donating samples from a booth.

[3:41:35 PM](#)

REPRESENTATIVE HOLMES said she went to a charity auction and cakes and desserts were sold at auction. She asked for clarification.

REPRESENTATIVE T. WILSON answered that she wanted to hold a chili cook-off and put up flyers. She stated that DEC asked whether the chili would be cooked in a certified kitchen. She indicated that she would need to have a permit to cook the chili. She addressed the permit issue by calling it a chili cook-off potluck, which was allowable and did not need a permit.

[3:43:18 PM](#)

CHAIR OLSON related his understanding that HB 202 would cover milk, cheese, dairy products, seafood, meat, and meat products, which could include turkey.

REPRESENTATIVE T. WILSON agreed.

CHAIR OLSON suggested if HB 202 was amended to exclude those activities the opposition to the bill would likely dissipate.

[3:43:44 PM](#)

REPRESENTATIVE T. WILSON said she would like more farmers' markets and to encourage agriculture.

CHAIR OLSON recalled that most of the items at farmers' markets are fruits or vegetables.

[3:44:07 PM](#)

REPRESENTATIVE JOHNSON recalled that fish and meat is sold in Anchorage at farmers' markets.

CHAIR OLSON asked whether the fish and meat products sold at farmers' markets were commercial products.

REPRESENTATIVE JOHNSON said he was unsure.

CHAIR OLSON offered to work with the sponsor.

[3:44:51 PM](#)

REPRESENTATIVE T. WILSON said she wanted to write HB 202 so it was not limited to just one sector. She recalled that Illinois has compiled a task force to reach a goal of having 20 percent of its food products coming from the local market instead of being imported from Mexico or Brazil and paying the transportation costs. She characterized HB 202 as a starting point.

[3:45:38 PM](#)

REPRESENTATIVE SADDLER asked how she arrived at \$200,000 cap.

MS. STIVER explained that people must be able to demonstrate to banks that they have sufficient revenue for processing

equipment. She related that providing adequate refrigeration and using stainless steel is very expensive.

[3:46:46 PM](#)

REPRESENTATIVE SADDLER related his understanding that this would be the minimal revenue stream to support the equipment. He asked what types of crops or businesses fit under the cap.

REPRESENTATIVE T. WILSON answered that she did not discuss that aspect. She explained she tried to figure out what the amount a business would need for a loan. She envisioned that businesses would grow and expand beyond the \$200,000 cap in HB 202. She explained her effort was geared towards farmers' markets to vendors who would sell to people within their own region. She suggested one solution to address the requirement to list personal information on products could be to have DEC identify vendors by numbers, rather than have them give out their names, addresses, and phone numbers.

REPRESENTATIVE JOHNSON asked whether honey sales would be allowable under the bill.

REPRESENTATIVE T. WILSON offered her belief that honey is considered safe. She was unsure if the DEC regulated honey sales by permit.

[3:48:37 PM](#)

REPRESENTATIVE MILLER asked whether HB 202 is limited to human food and not dog food.

REPRESENTATIVE T. WILSON said in Oregon some cheese is sold as dog food to circumvent the rules for unpasteurized cheese sales; however, she preferred to work within the rules and not have people try to go around the rules.

[3:49:23 PM](#)

REPRESENTATIVE MILLER referred to page 1, line 14 to the language in paragraph (3), and read, "the consumer to whom the food product is sold is the intended consumer of the product...." He said if he buys a tomato and subsequently gives the fruit to his child that he would not be the consumer consuming the food. He also did not sell the food. He inquired as to whether the activity would get any scrutiny by the DEC.

REPRESENTATIVE T. WILSON answered that she may need to get clarification on that issue. The bill intends that the person who produced the product would sell the product, but once the product is sold the DEC would not track it. She suggested it might be helpful to have some type of numbering system to track any problems that resulted; however, she did not think that activity should be addressed in statute.

REPRESENTATIVE MILLER suggested that HB 202 could be broadened rather than narrowed.

[3:51:14 PM](#)

MICHAELLA RICE, Member, Tanana 4-H Teen Club, stated that the Tanana 4-H Club is under the Cooperative Extension Service and the University of Alaska. She explained that the 4-H Teen Club does not label any fundraisers as bake sales so the club falls under the DEC's regulations, which has made it difficult for them to raise money to sponsor trips to offer leadership development. The club bakes also pies and many of them contain dairy products. She says she shares concerns that the home bakers might not have the proper hand washing or other rules; however it is difficult to find a DEC certified kitchen in Fairbanks that is affordable for their club. Additionally, the club provides babysitting at bazaars and community events. They offer children snacks, but processing oranges or apples is not allowed so they are limited to offering crackers or other snacks that are not as nutritious as fruit. She said she supports HB 202. She concluded that the bill will help her club by allowing them to serve and sell food items at their fundraising events.

[3:54:31 PM](#)

PAMELA LLOYD said she works for Providence Hospital and the Anchorage School District. One of her patients bought raw peas from a farmers' market, but someone repackaged the peas and did not warn people to wash the peas carefully. Although her patient used a vegetable wash to wash the peas, her whole family became ill, and her patient developed Guillain-Barre syndrome. Her patient was paralyzed from the neck down is now in a wheelchair. She emphasized that the legislature needs to be careful not to be too lax with the rules and if food is distributed beyond the first consumer that the source needs to be clarified for people. She concluded by stating that her patient innocently bought peas at a farmers' market.

[3:55:47 PM](#)

REPRESENTATIVE SADDLER asked for further clarification.

MS. LLOYD responded that the vendor repackaged the peas in freezer bags. She recalled the farmer packaged the peas in 50-pound bags, with a warning to wash with soap and water, but the message was not placed on the shelled peas, which were repackaged in freezer bags. In further response to Representative Saddler, Ms. Lloyd agreed the peas were repackaged.

[3:56:17 PM](#)

JILL LEWIS, Deputy Director - Juneau, Division of Public Health (DPH), Central Office, Department of Health and Social Services (DHSS) introduced herself.

[3:57:01 PM](#)

CHAIR OLSON asked whether the department supports the bill.

MS. LEWIS answered that the DPH has serious concerns and does not support the bill due to the impacts to human health.

CHAIR OLSON asked if HB 202 was amended to limit it to fruit, vegetables, and honey whether the bill would be more acceptable.

MS. LEWIS deferred to the epidemiologists and to the Department of Environmental Conservation.

[3:57:42 PM](#)

KRISTIN RYAN, Director, Division of Environmental Health; Department of Environmental Conservation (DEC), answered that two programs within the division would be impacted by the bill: the Food Safety & Sanitation Program and the Office of the State Veterinarian, which regulate animal products. She explained that cheese and milk products are regulated by veterinarians. She explained that the DEC recognizes the interest from small food business owners throughout the state to sell products. Provisions in HB 202 could cause significant risks to the general public and increase food borne illness outbreaks. When people purchase food to eat they assume it is safe and while no one intends to harm their customers, food borne illnesses are common and can easily happen. She stated that precautionary measures are necessary to serve safe food. At a minimum the environment must be sanitary and employees must wash their

hands, and maintain proper temperature controls. Several states have eliminated the enforceable requirements for preparing non-hazardous food when selling directly to consumers and not selling wholesale. This bill, HB 202, goes further than that by allowing the sale of hazardous food, including high-risk foods such as canned seafood, canned fish, shellfish, oysters, alfalfa sprouts, and cheese. She advised that these foods are risky and when processed incorrectly could cause great harm. Alaska currently exempts some non-hazardous foods, including syrup and honey, and jams. The DEC exempts bake sales for fundraising events, including custard fillings so long as the products are held at the right temperature. The DEC does not require a permit for peeling fruit for children in day-care centers and only regulate food at day-care centers that serve 12 or more children.

4:00:58 PM

MS. RYAN stated that Alaska is looking at exempting other non-hazardous food and has proposed regulations. The department has held public hearings all summer about expanding the exemptions. She pointed out that fruits and vegetables are already allowed to be sold without a permit so long as it is left in their natural state, which does include washing and removing roots and green parts, but not cutting since cutting with knives risk contamination. Currently, raw natural products are allowed to be sold. The proposed expansion would allow for bread, pickles, barbeque sauces, confections, roasted nuts, and cakes to be added to the products. The DEC has made numerous changes and hopes to have them finalized by May. The regulations are at the Department of Law for final review. This bill would allow the sale of hazardous foods, but also would allow someone else - other than the grower or preparer - sell the food. She related her understanding this goes beyond the intent of the bill. The DEC also believes the cap of \$200,000 is quite high, noting that other states allowing direct sales of non-hazardous foods, but limit the amount from \$10,000-20,000. She said in Alaska there are very few non-seafood food processors that gross more than \$200,000 so this bill would essentially not require a permit for almost all the food processors except for seafood processors. This bill would create a double standard since food processors making less than \$200,000 per year would be exempt, but those selling wholesale must comply with food safety rules. She added that wholesale would include selling products to Fred Meyer; however, a food processor, employee, or another individual operating under their supervision can sell the products to consumers. The bill does not restrict the type of sale so sales

could include Internet, phone, and mail order sales, which would not be subject to the same safety requirements as those selling the same quantity or volume of products to stores like Fred Meyer.

[4:03:59 PM](#)

MS. RYAN explained that HB 202 does not require any recordkeeping, which would make it impossible to verify and track the sales amounts. Most importantly, HB 202 would specifically eliminate the DEC's ability to inspect and investigate to determine if an outbreak is occurring. The bill specifies that the sale of food products is not subject to the regulation, testing, inspection, or penalties enforced by DEC. The DEC interprets this means the department may not inspect or test products or stop sales of products that may be making people sick. The assumption that there are fewer outbreaks associated with food processes now than in the past is incorrect. One of the deadliest outbreaks of listeria occurred last year from cantaloupe grown in the U.S. That outbreak caused 146 illnesses, 30 deaths, and one miscarriage. The Center for Disease Control estimates roughly one in six Americans or 48 million people become ill, and of those 128,000 are hospitalized and 3,000 die each year from foodborne illnesses. In Alaska, the DEC investigated five cases of foodborne illness that resulted in 53 confirmed illnesses in 2010. Citing the Division of Public Health data, from 2009 to 2012, 10 cases of food contamination resulted in 133 illnesses connected to food that was sold to the public. In August 2008, 103 people got sick with campylobacteriosis contracted from shelled peas that were processed and grown in the Matanuska-Susitna Valley. As to the repackaging, the peas were sold in smaller zip-lock bags at farmers' markets. She noted that foodborne illnesses are serious and occur in the U.S. and in Alaska. The DEC recognizes small food businesses want to be allowed to start without large investments and infrastructure, but it is important to recognize there are inherent risks with hazardous food. The DEC has chosen to address non-hazardous food since the risks are low enough that the exemptions could work without increasing sickness or illnesses. The DEC is committed to seek ways to make it easier to comply with food safety rules without jeopardizing public health. She offered her belief that the proposed regulations document that effort. In response to Chair Olson, Ms. Ryan agreed the department predicts the regulations will be finalized in May.

[4:06:25 PM](#)

REPRESENTATIVE SADDLER asked for a general statement regarding foodborne illness with respect to selling minimally processed vegetables and fruits as opposed to sausages and fish.

MS. RYAN answered that raw products can be risky since there are known pathogens on raw meats. She pointed out that risk is involved when processing the meat that either kills the pathogen or adds them to the product when the meat is not processed correctly. She said the DEC considers most raw produce generally safe, particularly if it is not cut or processed, which can introduce pathogen growth.

[4:07:59 PM](#)

REPRESENTATIVE JOHNSON recalled that consumers can buy oysters at the Alaska State Fair and the vendor shucks the oysters. He asked how these vendors are regulated.

MS. RYAN acknowledged that the Alaska State Fair oyster sales are a regulated activity. She stated that DEC performs lots of testing on the raw product to identify any problems such as paralytic shellfish poisoning or other things that naturally occur in the growth medium of oysters. She pointed out that lots of regulation occurs behind the scenes. This bill, HB 202 would allow the sale of oysters without any oversight.

[4:09:10 PM](#)

MARIA RENSEL stated that she would like to speak generally in favor of HB 202. She said she believes in removing regulations whenever possible to promote an unencumbered market economy. She strongly supports personal responsibility. She described the process for the regulation of raw milk, such that a person must buy a share in the cow or the goat. She said the regulation creates costs and discourages milk sales. It makes it costly for those who cannot afford to buy a share in the animal. Additionally, it makes it impossible for people who cannot afford to buy shares in the animal to obtain raw milk. She related her understanding that lots of health benefits are sought by people who buy raw milk products. She recalled how difficult it is to make cheese. She suggested keeping these provisions in the bill.

[4:11:38 PM](#)

MS. RENSEL explained that she buys hot dogs from the Delta Meat and Sausage Company and sells them at the farmers' market in Fairbanks from a stand called Golddigger Dogs. She said she was happy to hear the permitting process discussed because she applies for permit each year to operate as a new vendor, but if she decides to operate her business on a third day - at Ester or North Pole - that she needs to obtain an additional permit. Further if she chooses to sell on Monday evenings at the Fairbanks Downtown Market she must get still another permit. She must also buy separate permits to participate in the Midnight Sun Festival, the Alaska State Fair, the Chamber Business Expo, and Golden Days. She emphasized that she takes personal responsibility for selling the very best product she can sell no matter which day of the week it is so it seems she should be able to purchase a blanket permit. The bill does not address these complaints, but HB 202 is a step in the right direction. This bill would give a producer and purchaser an opportunity to exercise personal responsibility. She thinks this will prove itself in the marketplace. If a product is good people will purchase it over and over again. This keeps the producer in business and if the product is bad or makes people sick, a lack of customers will shut the business down. She stated that the market puts the irresponsible producers out of business because of their bad practices.

[4:14:03 PM](#)

REPRESENTATIVE SADDLER commented that she seems like an advocate for local food. He asked if any news of foodborne illness make consumers not trust locally-grown food.

MS. RENSEL answered definitely. She said that in the Interior a meat processor keeps going in and out of business under different names. She said, "People know what's up...." She said she could purchase meat from that vendor but chooses to go to Delta since the company has an excellent reputation.

[4:15:10 PM](#)

RON KLEIN read prepared written testimony as follows [original punctuation provided]:

Mr. Chairman, thank you for the opportunity to testify on HB 202. My name is Ron Klein and I have strong interest in growing Alaska's food industry, promoting the development of markets for local food as well as

maintaining our current national and global markets for Alaska food products.

I retired in October as the State's Food Safety and Sanitation Program Manager. I am Past-President of the Association of Food and Drug Officials which represents state agricultural and health food safety directors and program managers on a national level to promote safe food systems in the United States.

MR. KLEIN commented that this type of legislation is becoming pretty common and fortunately most states reject the approach.

MR. KLEIN continued to read prepared written testimony as follows [original punctuation provided]:

I am currently working as a food safety and emergency preparedness subject matter expert for institutions such as Louisiana State University, University of Tennessee Knoxville, and the International Food Protection Training Institute in Michigan. Locally, I am serving on the Governing Board of the Alaska Food Policy Council and part of the effort to help develop a market for safe, healthy, local foods.

My comments today are my own and do not represent my clients, employers or any organization I am associated with.

I do not think HB 202 is a productive way to grow Alaska's food industry. In fact it would have a deleterious effect on public health, harm to efforts to build a local food industry and could have a serious impact on Alaska's seafood industry.

HB 202 would remove all public health controls on the sale of locally produced foods to consumers. It would enable sale direct to consumers of potentially hazardous foods such as smoked or canned fish, dried meats, shellfish, poultry products, dairy products, and acidified and low acid canned foods.

Consuming improperly processed adulterated foods leads to serious illness or death from ingestion of pathogens such as, e.coli, salmonella, listeria, campylobacter, Clostridium botulinum, and toxins such as paralytic shellfish poisoning.

Problems with these products may not just make the people who consume them ill. The people infected with e.coli, salmonella, listeria, campylobacter them can make other people ill through poor sanitation and the fecal oral route.

MR. KLEIN recalled the food demonstration given earlier by Representative T. Wilson, and noted that during the demonstration her fingernail poked into the tomato. He explained that if her hand was not clean it could be a way of shedding the bacteria into the tomato, which could make someone sick. He emphasized that keeping and maintaining a sanitary environment is serious business.

4:19:05 PM

MR. KLEIN continued to read prepared written testimony as follows [original punctuation provided]:

The risk of foodborne illness from potentially hazardous foods is not hypothetical. The costs of a foodborne illness are not zero. Alaska leads the nation in the number of illnesses associated with botulism. The primary food source is fish and traditional foods. Under HB202 the foods which caused these illnesses which normally limited to family members and friends, could be sold directly to consumers and kill them. There would be no public health controls. Unfortunately, unless the consumers have health insurance the costs of their illness would be borne by Alaskans.

MR. KLEIN said he just read in the paper today that the Juneau Memorial Hospital has a \$12 million write-off. Those costs are borne by the citizens, who can afford to pay, he stated.

MR. KLEIN continued to read prepared written testimony as follows [original punctuation provided]:

The lack of labeling, record keeping, and regulatory oversight for potentially hazardous foods will also complicate the efforts of to investigate food borne illnesses, their causes and sources.

While he might understand people might be uncomfortable putting their name to a product, even a

non-potentially hazardous product, if an issue was associated with the product, it is important to know who is producing the product so if the person has hepatitis steps could be taken to curb production. If the information is not available more people will get sick and the marketplace is irrelevant.

There will be no way for public health professionals to trace back the source of a food borne illness to the source. There will be no ability for environmental health specialists to assist processors with identifying and correcting sanitation and processing flaws.

4:21:00 PM

MR. KLEIN continued to read prepared written testimony as follows [original punctuation provided]:

In 2008 there was a campylobacter outbreak in Alaska associated with the consumption of shucked raw peas, which are a non-potentially hazardous food, from a farm in the Mat-Su Valley.

MR. KLEIN elaborated that the outbreak was connected to crane poop which contained campylobacter and during the shelling process the peas came in contact with the hulls that had crane poop on them, which contaminated the peas and created the illness. He pointed out that the campylobacter could not be washed off the peas so the peas couldn't be cleaned.

MR. KLEIN continued to read prepared written testimony as follows [original punctuation provided]:

There were 54 laboratory confirmed illnesses associated with the peas. Five patients were hospitalized and one developed Guillain-Barre syndrome. These products would be exempt under HB 202. Under HB 202 DEC environmental health specialists would not have had the ability to help the farmer/processor identify food safety measures to implement to save his business.

4:22:55 PM

MR. KLEIN continued to read prepared written testimony as follows [original punctuation provided]:

Illnesses associated with these foods can harm the reputation of Alaska's food industry. Under HB202 an individual can, grow, process and sell shellfish in untested waters and without testing the shellfish for PSP beforehand. Last summer there a number of individuals became ill in southeast Alaska with PSP after consuming shellfish which they personally gathered. I recall being contacted by ASMI and growers who were concerned that the market for regulated inspected shellfish products would be harmed due to the publicity of people becoming ill after eating Alaska's shellfish. If someone contracts botulism from eating Joe's smoked or canned fish, it will have an impact on the market for inspected smoked or canned fish and harm the reputation of Alaska's seafood industry and the businesses of those who are doing it right.

MR. KLEIN said he has been involved with Chinese importers who are interested in purchasing Alaska's seafood since Alaska's seafood has had a reputation for being quality and safe.

MR. KLEIN continued to read prepared written testimony as follows [original punctuation provided]:

Just last summer there were 7 lab confirmed cases of campylobacter illnesses associated with consuming raw milk from a farm in the Mat-Su Valley. Last year the federal Food Safety Management Act of 2011 became law. There are a number of misconceptions about whether it applies to small producers. Apparently this appears to have been a model for HB 202. The fact is FSMA does. Facilities only have a qualified exemption. Facilities that qualify would be exempt from the preventive control/HACCP provisions in S. 510, but would still have to comply with one of the following:

(1) They would have to demonstrate that they have identified potential hazards and are implementing preventive controls to address the hazards, or

(2) they would have to demonstrate to FDA that they are in compliance with state or local food safety laws.

[4:24:50 PM](#)

MR. KLEIN continued to read prepared written testimony as follows [original punctuation provided]:

The Tester Amendment also includes a specific NON-preemption of state and local authority. Congress expected the states to continue regulating small producers as it has done so for decades. It only intended to limit federal involvement. However Congress also didn't turn its back.

According to the Tester Amendment in the event of an active investigation of a foodborne illness outbreak that is directly linked to a facility or farm exempted under this section, or if the Secretary determines that it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak based on conduct or conditions associated with a facility or farm that are material to the safety of food, the Secretary may withdraw the exemption provided to such facility.

HB 202 will do nothing to promote the sale of farm to schools or build sustainable value added industry.

MR. KLEIN said that farmers can't do so since those foods can only be sold direct to the consumer and cannot be sold to the schools. He stated that he held a conversation with the Under Secretary Elizabeth Kagen, Department of the Interior, who is responsible for food safety inspection services and nutrition who advises that the DOI expects foods purchased for national school lunch and provided under the school lunch program comes from facilities with good agricultural practices and are knowledgeable. That is one of the requirements of the program, he said.

MR. KLEIN continued to read prepared written testimony as follows [original punctuation provided]:

I recommend that HB 202 be efforts be tabled. DEC is completing revisions to the Alaska Food Code which essentially deregulates or simplifies regulation of non-potentially hazardous food sold directly to consumers. I think when it is in effect it will go a long ways towards meeting the needs of Alaskan's who want to selling some products directly to consumers.

Other efforts such as the one envisioned by HCR 24, which has received broad House support and which asks the Governor to create a State Food Resource development Group.

[4:27:50 PM](#)

CHAIR OLSON interjected that the measure he mentioned is not currently before the committee.

MR. KLEIN acknowledged that the resolution was not before the committee and indicated he mentioned it as it was related to food. He indicated he was nearly finished. He continued to read prepared written testimony as follows [original punctuation provided]:

The other activities detailed in the Alaska Food Policy Council's Strategic plan will provide for a thoughtful reasoned approach to grow Alaska's food industry and increase the opportunities for Alaskan's to have better access to safe, nutritious, high quality local foods.

MR. KLEIN noted that he included attachments with his testimony.

REPRESENTATIVE SADDLER asked whether he ever eats farm-produced produce direct from farms or farmers' markets.

MR. KLEIN answered yes. He said he does not have any problem with purchasing from farms.

[4:28:31 PM](#)

REPRESENTATIVE SADDLER asked if he has ever gotten sick.

MR. KLEIN said he commonly purchases whole produce, which is not regulated.

REPRESENTATIVE SADDLER asked again if he has ever gotten sick from produce.

MR. KLEIN responded he did not know. He explained he wasn't trying to be flip with his answer; however, foodborne illness may have a 48-hour incubation time or more depending on the pathogen. He said foodborne illness is underreported due to this delay. The only way to know for certain the source of the problem is to have fluids tested against the food. Lots of

surveillance is being done to help identify the causes of foodborne illnesses. He confirmed that he has not made any personal connection between the farm produce and illness.

[4:29:31 PM](#)

REPRESENTATIVE T. WILSON said she noticed how much produce is being purchased from Mexico and Brazil. She related that at some point we have to realize that people are selling food or giving it away. She pointed out the cow shares and goat shares as ways people circumvent the raw milk sales rules. She does not favor going around the rules. She questioned the number of people actually getting ill from farmers' markets. She said she requested the statistics of people who became ill between 2009 and 2012 and there were none in Alaska. She characterized this bill as a policy call on whether to promote farmers' markets and farm sales or if Alaskans would rather buy all their food from other countries. She acknowledged HB 202 has some issues.

[HB 202 was held over.]

[4:30:38 PM](#)

The committee took a brief at-ease.

HB 327-EVIDENCE RULES: UNION/EMPLOYEE PRIVILEGE

[4:32:01 PM](#)

CHAIR OLSON announced that the next order of business would be HOUSE BILL NO. 327, "An Act making privileged certain communications between employees and employee union representatives; and amending Rule 402 and Rule 501, Alaska Rules of Evidence."

[4:32:11 PM](#)

REPRESENTATIVE BOB LYNN, Alaska State Legislature, asked members to imagine they are employees whose employer alleges wrongdoing on the job. The employees obviously need help and cannot fight the battle alone so they go to their union representative and share the accusations and information. He pointed out that when parties speak to their attorneys the employees share privileged information in an honest manner. The employees assume their discussion will be held in confidence. The union representative's process is to take the information to the next

level and the process is then repeated. The next step is litigation and the union representative is subpoenaed and required under oath to reveal everything their employees stated, including damaging information. He asked whether this is fair and reasonable. He stated that he would not want it to happen to him. He hoped members would not think this is the way to resolve problems for the employer and their employees. He pointed out that these issues do not occur in the private sector since employers and employee advocates can speak frankly about grievances without fear of their discussions being subject to subpoenas. He offered his belief that the same limited privilege of confidentiality should be attained for the public employee sector as well.

REPRESENTATIVE LYNN said, "I think that's only fair. That's really what this bill is all about. It's to ensure that a union advocate can fulfill their duty of fair representation in disciplinary procedures and making things fair and equitable for everybody that's concerned." He asked members to try to put themselves in the scenario he just described and members will understand what the bill is all about.

[4:35:31 PM](#)

MIKE SICA, Staff, Representative Bob Lynn, Alaska State Legislature, stated that Section 1 amend Alaska Statute 09.25, the code of civil procedures, by adding a new subsection AS 09.25.405, which provides that confidential communications between employee and employee representative of an organization are privileged conversations, when conducted in an advocacy setting in a disciplinary matter and provides for the definition of "organization."

[4:36:12 PM](#)

MR. SICA stated that Section 2 amends AS 23.40, by adding a new subsection 23.40.065, which provides that (a) an individual cannot be compelled to disclose information in any proceeding, acquired from an employee represented by the individual, if such information was obtained in confidence and was in connection with an individual providing advocacy services in regards to disciplinary proceeding of the employee.

MR. SICA related that subsection (b) provides exceptions to the privilege, such as being ordered by the court to disclose, if there is information concerning the commission of a crime, or if the employee consents to disclosure. Subsection (c) provides

that if there is a conflict between this statute and federal or state law, then this statute is preempted and does not apply; and subsection (d) provides for the definition of "organization" to include any labor or employee organization existing in the state, and a definition of "proceeding," which includes any legislative, judicial, administrative, or any other proceeding requiring testimony under oath, and any arbitration, hearing or meeting under the grievance procedures of a collective bargaining agreement.

[4:37:18 PM](#)

MR. SICA related that Section 3 declares an indirect court rule change [Alaska Rules of Evidence 402 and 501]. He explained Section 4 provides that Sections 1 and 2 can only take effect if Section 3 is approved by two-thirds vote of both houses. He summarized that this bill places in statute what most people already thought existed.

[4:37:32 PM](#)

REPRESENTATIVE HOLMES referred to Section 2, which she said she assumes is patterned or is similar to a whole host of other professions such as accountants, therapists, social workers, and attorneys with this type of privilege.

[4:38:03 PM](#)

MR. SICA pointed out that the bill drafter is online and could more specifically answer; however, this language is patterned after an Illinois law. He agreed that other privileges include communications between a husband and wife and clergy, and is limited so it wouldn't be as broad as attorney-client communications, but is relevant to the conversations in the grievance process.

[4:38:29 PM](#)

REPRESENTATIVE SADDLER referred to page 1 line 7, to confidential communications. He asked for clarification on the definition of confidential communication.

MR. SICA answered that in his limited understanding he thought it would refer to anything that falls under the privilege, which would include a communication between the union representative and the employee as it pertains to an anticipated or ongoing disciplinary proceeding.

4:39:13 PM

REPRESENTATIVE SADDLER asked what the limits would be in terms of an anticipated disciplinary meeting. He questioned whether that might be too broad since any conversation might relate to a disciplinary proceeding.

REPRESENTATIVE LYNN offered his belief that it would be limited to grievance under discussion.

MR. SICA pointed out that the Senate held hearings on the companion bill and testimony revealed this was a required process early on in any type of pre-court phase of disciplinary hearings. He said he did not know for certain.

4:40:11 PM

REPRESENTATIVE SADDLER asked for clarification on disciplinary proceedings and the threshold.

REPRESENTATIVE THOMPSON stated that he is not an attorney. He related his understanding that HB 327 relates to public employees and that public unions are being discriminated against. He suggested if it is a private employer with union employees that the shop steward communications would be privileged, but these communications are not privileged for public employees.

MR. SICA related his understanding that in a private situation privileges are extended by the National Labor Relations Act.

4:41:11 PM

REPRESENTATIVE MILLER related a scenario in which Mr. Sica was in the union and Representative Miller, as his boss fired him. He asked if the action would be an anticipated disciplinary hearing and if the firing would be covered by the wording.

MR. SICA offered his belief that the communication would be an ongoing procedure since as the employee he will go to union representative to file a grievance and his union representative will be involved in the process.

4:41:54 PM

DOUG MERTZ, Attorney, Mertz Law, stated he became involved with this issue when one of his clients was unfairly terminated by the state. He explained that the law requires a very specific process must be used, such that a person cannot immediately sue, but must exhaust administrative remedies. In order to do so, the employee must engage in a process with the state Division of Personnel. He detailed that a representative from that division and a representative of the aggrieved person attempt to work out an agreement, which is a process that can go on for a substantial amount of time and can potentially result in arbitration. The state requires the employee be represented by a union advocate - a non-lawyer advocate - and prohibits the employee from being represented by an attorney. In fact, if the employee was allowed to hire private counsel the usual attorney-client would apply and there wouldn't be any question that all the communications were private. However, the state requires a non-attorney represent employees during this process. He relayed the process, noting that once the administrative processes are exhausted the suit is brought forth using a private attorney. In his client's case at that point the state alleged no privilege exists and issued a subpoena for all the information from the union's file. Thus everything related to the member, any discussions between the union representative and the member, including tactics, case evaluations, and potential acceptable or unacceptable settlements, and any strategies were subpoenaed.

[4:44:40 PM](#)

MR. MERTZ reinforced that if an attorney had been involved there would not be any question that it would be blatantly wrong and improper to even demand these things. He stated that he formerly held the position as an assistant attorney general and at the time no one would have even thought of issuing a subpoena for the records, and if they had, the action would likely have been considered unethical. However, in the past two years the Department of Law has decided to attempt to gain an advantage during litigation, including employing this tactic. He characterized this action as so extreme and outrageous that when a similar situation - a parallel case - came before the California Supreme Court, the court said it would be ridiculous for the California legislature to set up a system whereby the only thing a lay advocate could say is, "Don't talk to me." He predicted that is what will happen as soon as people realize that communications between the advocate and the member can be obtained by the state. He further predicted that people will not talk to their advocate and their advocates will not talk to

them and the entire process will fall apart. He surmised the state could potentially call the advocate as a witness against the advocate's own client. He brought up one case in another state that pertained to collective bargaining between a school district and the teacher's union. The teacher's union tried to subpoena all of the internal communications of the school district relating its collective bargaining position - what the school district intended to ask for and not ask for - and in that case the Illinois Supreme Court said Illinois could not do so.

[4:46:55 PM](#)

MR. MERTZ pointed out numerous cases in which employees have reported to some authority serious wrongdoing. In those instances the employers attempted to subpoena, essentially retaliate, by requesting information on their employees. He again predicted that if this were allowable the entire system would fall apart. Essentially the system set up to make resolution of grievances more efficient would fall apart and the employees would simply mark time until they could sue since the employees would then have proper confidential relationships. He reported that the Alaska Supreme Court is currently considering his client's case. He questioned why the legislature should consider this issue since the court may soon decide the case. He offered two reasons for the legislature to take action now. First, the Alaska Supreme Court takes a long time to decide cases. Second, when the Alaska Supreme Court considers the matter it will not focus on whether it is good idea to prohibit this practice, but rather will consider whether the action is unconstitutional - a denial of due process - to allow the employer to make this type of demand from the union. He pointed out that this is a much higher bar to satisfy. It is entirely possible the Alaska Supreme Court could rule that the state's actions are unfair, but it does not violate due process; however, the legislature has the privilege of being able to decide whether the state's actions constitute good or bad policy, and whether the state should simply set a standard and set aside the constitutional issues. Therefore it would be appropriate, for those reasons, for the legislature to look at this case now. This bill would affect lots of people since it is not limited to public employees, but could also apply to private employees who are union members. He surmised since it has now become an official policy of this administration to employ these types of tactics, the actions will probably spread to private employers. He urged members to look very strongly at this now. He hoped the committee will conclude the importance

of having an even playing field and confidentiality is essential to that process. He concluded that confidentiality between employees and their union representatives should be preserved through a bill like this.

[4:49:40 PM](#)

REPRESENTATIVE HOLMES remarked that she thinks what she is hearing is completely unconscionable - that people are not able to use an advocate since everything is discoverable at the next level. She asked whether the state can subpoena the union's records, but the union cannot subpoena the records from the state.

MR. MERTZ answered no; the union cannot subpoena the records from the state.

[4:50:52 PM](#)

REPRESENTATIVE SADDLER recalled Mr. Mertz cited an Illinois Supreme Court case in which a union tried to do a reverse discovery. He asked whether the union should have the right to do so.

MR. MERTZ answered that goes right to the question of what the role of the union is in the collective bargaining process. He said if only one side has access to the confidential planning sessions prior to the collective bargaining sessions that it makes the whole collective bargaining process meaningless, which is why the National Labor Relations Board (NLRB) and others have said this effectively destroys the role of the union and should be prohibited.

[4:52:07 PM](#)

REPRESENTATIVE SADDLER asked whether either side should have a hidden microphone privilege.

MR. MERTZ answered yes.

REPRESENTATIVE SADDLER asked if the hidden microphone privilege were allowed the parties would go straight to court.

MR. MERTZ responded that it would make the initial process meaningless. Currently, the process is quite efficient for most minor or major grievances. He offered his belief that it is a valuable process to have and once the playing field is lopsided

during the administrative process that it ruins the usefulness of the entire administrative process.

[4:52:53 PM](#)

REPRESENTATIVE SADDLER asked if he is aware of any advice given employees with respect to the grievance process.

MR. MERTZ responded up until this incident happened the assumption has been that - for most part - anything between a union advocate and his/her member has been deemed confidential. Thus when a union representative talks to the member he/she asks the member to tell the advocate everything about the case; however, that can no longer happen.

[4:53:49 PM](#)

REPRESENTATIVE SADDLER asked for the definition of confidential communication between an employee and a union representative.

MR. MERTZ answered that confidential communication is not defined in the bill. He predicted the court will go back to the parallel privileges in the rules for attorney-client privileges to decide when the privilege begins and when it doesn't apply. He elaborated that very specific precedents apply to an attorney and his/her clients.

[4:54:28 PM](#)

REPRESENTATIVE SADDLER asked whether the union advocates should have the same protections as an attorney when meeting informally with their clients.

MR. MERTZ answered yes.

[4:54:36 PM](#)

REPRESENTATIVE SADDLER asked when the decision in his client's specific case is expected.

MR. MERTZ answered that oral arguments were held two weeks ago. The Alaska Supreme Court typically issues their decision between six months and a year after oral arguments.

[4:55:05 PM](#)

REPRESENTATIVE HOLMES related her understanding that since this precedent has been set that the current advice is not to talk to advocates.

MR. MERTZ answered yes, that has to be the outcome.

4:55:25 PM

PETE FORD, Southeast Regional Manager, Alaska Public Employees Association (APEA); President, Juneau Central Labor Council, stated that the Juneau Central Labor Council is the local affiliate of the AFLCIO. The APEA represents 8,000 employees and a few private sector employees in the state, school districts, university, cities, boroughs, and nonprofit organizations. He stated that he speaks today in favor of adoption of HB 327. He characterized this bill as a significant and meaningful source of solace during a time when employees are already facing difficult situations.

4:57:15 PM

MR. FORD estimated that in approximately 60 percent of the time APEA's members frequently interrupt the discussions with their union representatives to ask whether their communications will be held as confidential communications. He speculated that in approximately 30 to 40 percent of the employees who seek guidance when they encounter difficulties with their employers ask whether their discussions are confidential. He has always been able to confidently answer yes. He emphasized that he needs to have honest and complete information during these discussions in order to fully understand the employee's situation and explore acceptable settlements.

4:58:17 PM

MR. FORD stated during the day-to-day activities of union representation that HB 327 would offer employees assurance of their confidential rights, which is appropriate and proper.

4:58:35 PM

REPRESENTATIVE SADDLER asked for the threshold for a disciplinary action or anticipated disciplinary action.

MR. FORD answered that typically these employees would be facing dismissal situations, but other actions could include suspensions or reductions in pay or status, and in some

instances employees would face reprimands of some type as a first level of discipline. He pointed out that sometimes he consults with employees who sense the atmosphere in the workplace has become uncomfortable and they also sense that they are being treated differently by their supervisor or manager. He emphasized the importance of confidentiality in those situations so the union can more fully understand the specific situation and help the employee rebuild his/her relationship with his/her supervisor.

5:00:02 PM

REPRESENTATIVE SADDLER related his understanding that the privilege should kick in at the lowest level of disciplinary or potential disciplinary action.

MR. FORD agreed.

REPRESENTATIVE SADDLER asked whether there would be any point at which the privilege would not be necessary.

MR. FORD said he was unsure. He then speculated that a theoretical conversation would not require a privilege.

[HB 327 was held over.]

5:00:49 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:00 p.m.